

IN THE MATTER OF : BEFORE THE
TED NAYDAN : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 15-006V

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DECISION AND ORDER

On May 11, 2015, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Ted Naydan for a variance to reduce the required side lot line setback from ten feet to one foot for a sun room addition, landing and stairs in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations.

Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. Ted Naydan testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Elevations and plan of proposed sunroom

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 6th Election District on the northwest corner of the Teresa Lane intersection with Susini Drive. It is identified as Tax Map

46, Grid 18, Parcel 93, Lot 26 and known as 8750 Susini Road (the Property). The Property is Lot 26 in the Lakeview Section 4 Area 2 subdivision.

2. Property Description. The 14,418sf, irregularly shaped, corner lot Property is improved with a single-family detached dwelling and attached garage. The dwelling fronts on and is accessed from Susini Drive. At its closest point, the dwelling sits 51 feet from the Susini Drive lot line, 45 feet from the Teresa Lane lot line and close to or on the 10-foot side lot line behind the dwelling. Attached to the rear of the dwelling is a 16'(w) x 10'(l) screened porch (with a landing and steps), which encroaches 9' into the 10' side setback. The porch therefore sits one foot from the side lot line.

3. Vicinal Properties. All vicinal properties are zoned R-20 and improved with a single-family detached dwelling.

4. The Variance Request (§ 108.0.D.4.c.(1)(b)). Petitioner is requesting a variance to reduce the required side setback from 10 feet to one foot for a sunroom addition, landing and stairs. The variance plan states the existing screened porch is to be replaced by a sunroom proposed to be 16'(w) x 10'(l).

5. Technical Staff Report (TSR). The TSR notes the absence of any county data about the construction date of the existing screen porch and no record of a variance for the Property.

6. Petitioner Ted Naydan testified to being the project contractor. As the Hearing Examiner understood his testimony, the current property owners purchased the Property with the screened porch.

7. The Hearing Examiner discussed the requested setback with Mr. Naydan, explaining

her concern about an addition that would be set back only one foot from a property line, which effectively leaves no room for a property owner to walk around this section of the property and might prove difficult to maintain or mow. She also discussed her concerns that a one-foot setback might cause the current or future property owners to trespass on the adjoining property. Lastly, the Hearing Examiner explained that she has never approved a one-foot setback for an addition to dwelling on a residentially used property. Upon further discussion with the Petitioner, the Hearing Examiner determined to approve a lesser variance, which would allow the Property owners to construct a 16'(w) x 9'(l) sunroom addition, and which would sit two feet from the side lot line, subject to the condition that the Property owners erect a fence identical or similar to the existing fence on the Property, with the new fencing to run along the westerly side lot line beginning at the end of the existing fence running along the westerly lot line behind the house and ending at a point along the lot line just beyond the northern face of the attached garage.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with Section 130.0.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition,

practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.0.B.2.a.(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

In this case, the Property is irregularly shaped, which causes practical difficulties in complying strictly with the setback regulation, in accordance with Section 130.0.B.2.a.(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

Subject to the conditions of approval, including the fence and the lesser setback, the variance would not alter the essential character of the neighborhood or district or substantially impair the appropriate use or development of adjacent property, in compliance with Section 130.0.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The property owners did not create the practical difficulties, in compliance with Section 130.0.B.2.a.(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed variance is for a reasonable use of the Property, an attached sunroom. It is therefore the minimum necessary to afford relief, in compliance with Section 130.0.B.2.a.(4).

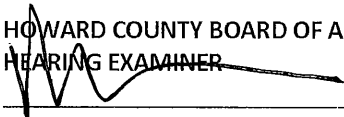
ORDER

Based upon the foregoing, it is this **8th Day of June 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Ted Naydan for a variance to reduce the required side lot line setback for a sun room addition in an R-20 (Residential: Single) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance is approved for a 16'(w) x 9'(d) sunroom addition.
2. The variance shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan, as modified in size, and not to any other activities, uses, structures, or additions on the Property.
3. The building permit application shall accurately depict the addition as nine feet in depth and two feet at its closest point to the side lot line. The stairs and landing shall also be shown as no closer than two feet from the ten-foot side lot line setback. The building permit application shall include a scaled plan accurately depicting the location of the ten-foot side setback (the 10' building restriction line), the location of the dwelling with respect to this setback, the proposed addition and the two-foot setback for the addition.
4. The Petitioner shall install a fence along the westerly side lot line beginning at the end of the existing fence running along this same westerly lot line behind the house and ending at a point along the lot line just beyond the northern face of the attached garage.
3. The Petitioner shall obtain all required permits, including all retroactive permits.
4. The Petitioner shall comply with all county laws and regulations.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.